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The Council on Environmental Quality
Associate Director for National Environmental Policy Act Oversight
Attn: Horst Greczmiel
722 Jackson Place, NW
Washington, DC 20503

SUBJECT: SHELL COMMENTS ON CEQ NEPA EFFICIENCIES

Dear Mr. Greczmiel:

We at Shell Exploration & Production Company have reviewed the draft guidance in the Memorandum on “Improving Processes for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act” that was prepared by the Council on Environmental Quality (CEQ) with the intent that federal agencies and departments will improve the efficiency and timeliness of their environmental reviews under the National Environmental Policy Act (NEPA). We appreciate the opportunity to provide the following comments.

It is clear that current practices under NEPA could be made better, and we are pleased that President Obama has called for “further steps” to make permitting and environmental review of infrastructure development more efficient and effective. The Memorandum describes the provisions of the CEQ Regulations that can help achieve this goal, and this can serve as a helpful reminder to agencies about the tools and options already available to them. At the same time, we have difficulty identifying the “further steps” that the President has called for, nor does the Memorandum reflect an analysis of the factors that currently lead to inefficiency and delay in the NEPA process. To achieve the President’s goal, we respectfully suggest that such analyses be undertaken and further steps be identified at the earliest possible opportunity. Shell would be happy to work with the CEQ to undertake this exercise.

In the meantime, we can offer some comments on the processes described in the Memorandum. As noted, existing NEPA regulations already specify that the process is meant to “*reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point...*” Instead, over the past 40 years, implementation of NEPA has resulted in increasingly burdensome and costly documents. Even this guidance reiterates long-established regulations that specify environmental impact statements (EIS) should be around 150 to 300 pages in length, depending on complexity, and that 10 to 15 pages would be appropriate for an environmental assessment (EA). Based on our experiences, this is far removed from what NEPA documents are today. It is not unusual for 1,500-page EISs and 150-page EAs, along with the standard 30 to 45 day review periods, which are neither effective for the agencies creating these documents nor for the public trying to understand the most important items of concern. If efficiency is the stated goal, then the reasons for the bloated conditions of these NEPA documents must be more fully analyzed by CEQ. Currently, the guidance mostly reiterates existing policy, which does not get to the heart of agency cultures that have resulted in the creation of overly long and repetitious documents. In some instances we feel the draft guidance actually may be creating the opposite effect than is intended.

The CEQ regulations primarily relate to the development of EISs, and to a lesser extent, the minimal requirements associated with EAs. In this guidance, CEQ is recommending that the agencies incorporate scoping during the development of EAs. While the regulations never *required* scoping for EAs, its omission does not preclude the agencies from exercising this option. If the public starts to expect that all EAs will now automatically include scoping rather than this being conducted on a specific and limited basis, it is possible this could further slow down the EA process. This should be clarified in the new guidance.

As most agency staff will tell you, scoping as currently conducted generates little interest from the public and generally does not provide information beyond what the agencies already know. A more effective public scoping process should be created that takes advantage of electronic and social media and places a greater emphasis on making direct contacts with researchers, stakeholders and local entities to help identify a realistic set of action associated with the project in question and the most important environmental issues associated with those actions. Agencies should also be able to take advantage of the information and comments received through previous scoping processes for EISs on the same topic. CEQ could also create a “negative scoping determination.” If the significant issues are already known, then the agencies should be able to list them and inform the public that scoping will not be conducted, and then give the public 30 days to make any additional significant issues known. This would save significant costs on currently limited returns when no new information is being generated.

CEQ could also bring a greater force to bear on the agencies to truly focus on the significant issues with only a brief discussion of insignificant issues and the reasons for not covering them in greater detail. The fear of litigation, along with limited resources to create these overly burdensome NEPA documents, is confounding the ability of agencies to develop more concise

assessments. One suggestion would be for the agencies to use NEPA-trained editors to review for clarity and brevity, which is a much harder process than putting words on paper.

CEQ needs to more forcefully advocate for agencies to establish and commit to appropriate timelines. The draft guidance basically says that “establishing appropriate time limits” promotes efficiency and then it reiterates current CEQ regulations. A stronger argument needs to be propounded that the agencies will be held accountable to reasonably-expected timelines, especially between the draft and final NEPA documents. While we understand that timelines may need to be adjusted or extended in order to develop a comprehensive and defensible DEIS, agencies should still provide stakeholders with clarity and transparency about their progress towards and deadlines for completion.

The guidance refers to a process of modifying a draft EA directly into a final document if the changes are minor, and that this would be “similar” to the process also described for an EIS. We support this recommendation, but the guidance needs to explain whether an agency would also need to make public all comments received on an EA as well as the agency’s responses to those comments. If this is the implication, then this would also result in a public expectation that this will be done for every EA, which effectively would mean that EAs become nearly indistinguishable in form to the EISs.

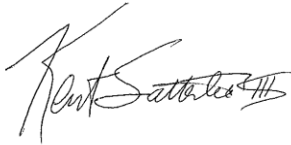
CEQ discusses coordinating documents under other applicable laws to help the reviews run concurrently. This could certainly help streamline federal agencies on similar NEPA work. For example, the permitting agencies involved in Outer Continental Shelf oil and gas activities, such as the Bureau of Ocean Energy Management (BOEM), National Oceanic and Atmospheric Administration, Environmental Protection Agency and Fish and Wildlife Service, could combine their analysis into one NEPA document and create strict timelines on the process. But to get the agencies to agree to work toward this goal might require CEQ to take a stronger approach. It is questionable whether these agencies would take this initiative themselves.

Certain agencies also need to better manage their own procedures. BOEM, for example, needs to streamline its processes and timelines by relying on its up-front NEPA work rather than conducting “after the fact” reviews that prevent the exercise of valid lease rights. This includes post-lease EAs that create new comment periods and for the proposal for the Bureau of Safety and Environmental Enforcement to do another “adequacy” review after BOEM completes the EA. CEQ guidance should address reducing these duplicative NEPA processes.

To better track whether agencies are implementing these recommendations, CEQ could request that agencies document their improvements, such as in their sustainability performance plans. The costs associated with printing of documents, including CDs, emissions related to travel to attend scoping meetings, and other energy expenditures associated with preparing these documents, are burdens that could be quantified.

We wholeheartedly support the creation of “concise, clear and to the point” NEPA documents. We support CEQ’s efforts in this regards, but we hope that this includes a more forceful approach to ensure effective changes occur in agency implementation of NEPA. We believe this is good government and would better serve the public.

Kind regards
Shell Exploration & Production Company

A handwritten signature in black ink, reading "Kent Satterlee, III". The signature is written in a cursive, flowing style with a large initial 'K' and a distinct 'III' at the end.

Kent Satterlee, III
Manager Regulatory Policy - Offshore
Upstream Americas